

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

In re Terrorist Attacks on September 11, 2001

03 MDL 1570 (GBD) (FM)
ECF Case

This document relates to:

Ashton, et al. v. al Qaeda Islamic Army, et al., 02-CV-6977 (GBD)(FM)

Megan W. Bennett, Esq., hereby states under penalty of perjury that:

1. I am an attorney representing the *Ashton* plaintiffs in the above-captioned litigation.

I submit this declaration and the attached exhibit, which is the sworn declaration of Maxwell Sivin, in support of ECF No. 6123, Plaintiffs' Objections to Reports and Recommendations Regarding Non-Immediate Family Members (ECF Nos. 5387 and 5701).

2. As explained in Maxwell Sivin's declaration, while his mother and stepfather Joel Miller maintained two homes up until the time that he was about 17 years old, the family cohabitated nearly continuously from the time he was 15 years old until Joel's death, largely moving between the two households.

3. In light of the criteria that the Court established for non-immediate family members, which required that a minor child of a stepparent killed on September 11, 2001 cohabit with the victim for at least two years prior to the child's 18th birthday, and given the information provided by Maxwell Sivin, the denial of Maxwell Sivin's motion for an award of solatium damages was erroneous.

4. When a party files objections to a report and recommendation, a district court must make a *de novo* determination as to those portions of the report to which objections are made. *See* 28 U.S. C. § 636(b)(1)(C); *Rivera v. Barnhart*, 423 F. Supp. 2d 271, 273 (S.D.N.Y. 2006). The

district judge may also receive further evidence or recommit the matter to the magistrate judge with instructions. *See* Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b)(1)(C).

5. In light of this further evidence supporting the objection to the denial of a motion for final judgment for Maxwell Sivin, we ask that the Court grant the proposed Order filed separately for a final solatium damages judgment for Maxwell Sivin in the amount of \$4.25 million.

Dated: May 15, 2020
New York, NY

/s/ Megan W. Benett
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